

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,
Plaintiff

vs.

Case No. 1:19-cr-10080-NMG

DAVID SIDOO ET AL,
Defendants

TRANSCRIPT OF INTERIM STATUS CONFERENCE
BEFORE THE HONORABLE M. PAGE KELLEY
AT BOSTON, MASSACHUSETTS
ON JANUARY 17, 2020

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P R O C E E D I N G S

2

3 THE CLERK: Today is Friday, January 17, 2020, and we
4 are on the record in Criminal Case No. 19-10080, the United
5 States versus David Sidoo et al, the Honorable M. Page Kelley
6 presiding.

7

8 Would counsel please identify themselves for the
record.

9

10 MR. ROSEN: Good morning, your Honor. Eric Rosen,
Kristen Kearney, Leslie Wright and Justin O'Connell for the
11 Government.

12

13 THE COURT: Good morning.

14

15 MR. WEINBERG: Good morning, your Honor. Martin
Weinberg on behalf of both David Sidoo and Robert Zangrillo.

16

17 THE COURT: Good morning.

18

19 MR. HUESTON: Good morning, your Honor. John Hueston
on behalf of William McGlashan.

20

21 MR. POPEO: Good morning, your Honor. Robert Popeo on
behalf of Elisabeth Kimmel, and I'm here with Corey Flashner
and Eoin Beirne.

22

23 THE COURT: Okay. Good morning to everyone.

24

25 MS. MINER: Good morning, your Honor. Tracy Miner for
Homayoun Zadeh.

26

27 MR. KELLY: Good morning, your Honor. Brian Kelly and
Josh Sharp on behalf of Mr. Gamal Abdelaziz.

1 THE COURT: Good morning.

2 MR. BERKOWITZ: Good morning, your Honor. Sean
3 Berkowitz on behalf of Lori Loughlin and Mossimo Giannulli.

4 THE COURT: Good morning.

5 MR. PIROZZOLO: Good morning, your Honor. Jack
6 Pirozzolo on behalf of Bill McGlashan.

7 MR. VIEN: Good afternoon, your Honor. George Vien on
8 behalf of Mossimo Giannulli.

9 MS. BASSIL: Good morning, your Honor. Janice Bassil
10 standing in for Ruben Cahn for I-Hsin Chen.

11 THE COURT: Okay.

12 MR. ROBINSON: Mark Robinson, Mintz Levin, for
13 Elisabeth Kimmel.

14 THE COURT: Good morning.

15 MR. KENDALL: Good morning, your Honor. Mike Kendall
16 and Yakov Malkiel for John Wilson.

17 MR. SCHUMACHER: Good morning, your Honor. David
18 Schumacher on behalf of Amy and Gregory Colburn.

19 THE COURT: Good morning.

20 MR. LOUCKS: Good morning. Mike Loucks for Marci
21 Palatella.

22 THE COURT: Good morning.

23 Okay, that's everyone. That's enough.

24 So I have a few housekeeping matters and then I'm
25 going to go over the Joint Status Report that the parties

1 filed, which is No. 730 on the docket. So I'm going to talk
2 for a little while, and then at the end I'm happy to hear
3 anything anyone has to say or any questions.

4 So just a reminder that by January 29th the Government
5 will file a memorandum to assist Judge Gorton in setting trial
6 dates, and defendants will file responses by February 12th. I
7 know this seems early to be dividing people up for trial, but I
8 think Judge Gorton wants to do this, and obviously it will be a
9 tentative sorting out of the defendants. I think everyone
10 understands that whatever is proposed now may well change, so
11 you can just keep that in mind. It's not going to be set in
12 stone. But I think Judge Gorton is particularly interested in
13 whether it's likely there will have to be more than one trial,
14 and if there is more than one trial, how will the Government
15 want to group the defendants.

16 Some of you may be familiar with the MS-13 case where
17 there were a ton of defendants and Judge Saylor did something
18 similar to this. I guess the real point of it is just that
19 Judge Gorton doesn't want the case to finish here before me and
20 then go up, and then numerous counsel have scheduling conflicts
21 so the trial has to be scheduled way, way out. That's really
22 the purpose of your meeting with him so early. The case will
23 still be referred to me, and we'll keep coming back here for
24 status conferences as long as there's work for me to do on the
25 case.

1 So there's obviously a Fourth Superseding Indictment
2 and everyone needs to be arraigned or waive arraignment
3 pursuant to Federal Rule of Criminal Procedure 10(b). There's
4 kind of a minor dispute about what is required when you waive
5 arraignment under the rule, that is waive the presence of your
6 client at arraignment, and some think that I should have a
7 hearing and the attorneys should appear and formally waive the
8 presence of their client at the arraignment, and I happen to
9 think that's not necessary. So the way I've been doing it is
10 I've just been accepting the written waivers and then
11 continuing on excluding the time as I have been doing under the
12 previous Indictment.

13 So if anyone has any objection to this or wants to
14 raise an issue that this is inappropriate, I'm very happy to
15 have you appear and you can waive your client's presence, and
16 we'll start the speedy trial clock again and so on. But if you
17 want me to do that, I'm happy to do it. Unless we hear from
18 you, I'm going to assume that there are no objections to my
19 doing it the way that I'm doing it.

20 Really, I think these are very sophisticated
21 defendants. I think there's probably no question you're all
22 going to discuss very thoroughly with them the new Indictment
23 and all of its ramifications for them, and so I'm happy to take
24 the waivers and not have them appear. But if you have a
25 difference of opinion on that, then just let Ms. Belmont know

1 and we're happy to schedule a hearing for you.

2 I would like to have the waivers to the arraignments
3 filed by January 31st if possible. If that poses some
4 difficulty, that's fine. You can let Ms. Belmont know. But
5 I'd just like to get that done.

6 So we have some outstanding issues regarding foster
7 hearings. After argument, I took several of these matters
8 under advisement. One of these matters, for example, was Boies
9 Schiller's joint representation of Mr. Zangrillo and
10 Ms. Isackson. Judge Saris is now considering this, and I do
11 not intend to return to that issue with regard to Mr. Zangrillo
12 until Judge Saris has ruled on that. Obviously, her ruling
13 concerning the joint representation of Ms. Isackson is going to
14 have a lot of bearing on what I do with the motion that I have
15 under advisement here.

16 I also took under advisement the issue of the joint
17 representation of Mr. Giannulli and Ms. Isackson by Donnelly
18 Conroy & Gelhaar, and, again, I think Judge Saris is also
19 considering this matter. I'm going to return to that issue
20 after she has made her ruling.

21 I also took the matter of Mr. Abdelaziz's
22 representation by Nixon Peabody, which also represents the
23 University of Southern California, under advisement. I have
24 been waiting to rule on these things because I've been waiting
25 for some of the issues concerning the specific conflicts to

1 sort of gel, and I think we're at that point now. I think
2 these issues need to be decided now that the case is kind of
3 moving toward resolution.

4 So with regard to Mr. Abdelaziz's situation, I invite
5 the parties to review their previous filings and file any
6 supplemental pleadings, if possible, by January 31st. If not
7 possible, you can contact Ms. Belmont and propose some dates.
8 I would also ask the attorneys for Mr. Abdelaziz to consider
9 providing the Government with a redacted version of No. 510-1
10 that's on the docket. It's presently, I think, not provided to
11 the Government. If it's not possible to provide even a
12 redacted version of that to the Government, I'd like you to
13 file something ex parte explaining why, and I may schedule a
14 further hearing on that matter in February.

15 Finally, I have an outstanding matter concerning the
16 17(c) subpoena in Mr. Zangrillo's case that I intend to address
17 in the near future. I'm going to ask the parties to contact --
18 well, I'm going to ask Ms. Belmont to contact you to schedule
19 something in the near future.

20 So I'm going to turn to the Joint Status Report unless
21 there are specific questions about anything I just said.

22 Yes?

23 MR. WEINBERG: Just one, your Honor. In terms of the
24 filings that are due for Judge Gorton in terms of breaking up
25 the megatrial and making proposings for different groupings,

1 can we get some guidance as to what the maximum number of
2 defendants Judge Gorton would consider in any one grouping and
3 whether he would consider three groupings rather than two? I
4 know that information may not be readily available, but would
5 help us in our determinations about what kind of groupings to
6 propose.

7 THE COURT: So I don't think he has a firm idea about
8 the number of defendants. I'll just say I once tried a
9 five-defendant case before him and that seemed like enough
10 defendants to me. But yeah, I think -- I don't know. I mean,
11 I assume he would include husbands and wives in the same trial,
12 but I think three groupings, I mean, depending on how many
13 defendants the Government thinks will make it that far, could
14 well be a good resolution.

15 MR. WEINBERG: And just so it's clear on the record
16 since we're discussing this, our proposals to Judge Gorton
17 would be subject to and reserving our kind of overriding theory
18 that the bases of joinder of the single conspiracy allegation
19 is legally in dispute and will be the subject of later motions?

20 THE COURT: Yes. I think it seems to me that motion
21 may be ripe in late June, so it might well be that you just
22 have to revisit the whole groupings issue after that. In other
23 words, I just think whatever gets proposed and adopted by Judge
24 Gorton as a result of these filings now will be tentative on
25 his part, obviously, because it might still be a lot of things

1 that could develop between the time he groups people and the
2 time for trial.

3 MR. KELLY: Judge, just with respect to Docket 510-1,
4 which you referenced Abdelaziz matter, can we get a copy of the
5 redacted version prior to filing any briefing on the 31st?

6 THE COURT: Sure. Why don't you just work that out
7 with the defendant and see if that can -- if you can work that
8 out. The 31st is not a firm date. Whatever you want to do.

9 I don't know if there have been any further
10 developments. I know some law firms, USC, terminated the
11 representation and that sort of thing. So if there's any
12 updates, I expect the parties to discuss it and then we'll --
13 I'll just try to issue a final decision on that. I think now,
14 kind of the sooner the better.

15 Anything else?

16 Okay. So let's look at the Joint Interim Status
17 Report. Thank you very much, it's very helpful. I note the
18 Government is requesting reciprocal discovery first and I find
19 that it's premature for me to get involved with that issue at
20 this time. I'm going to let the Government file a motion in
21 the future. I do want to put the defendants on notice that
22 they are expected to fulfil their obligations under the rules,
23 which I'm sure they plan to do. So I think it's just not ready
24 for my attention at this time.

25 Concerning the pending discovery requests, I would

1 like to ask the parties in the Abdelaziz motion that is ripe to
2 contact Ms. Belmont and we'll schedule a hearing date on
3 No. 648. Then we have a lot of motions that are not going to
4 be ripe until February 4th, and I had originally said on the
5 docket that I would potentially have hearings on those motions
6 on February 11th. It turns out the Government doesn't like
7 that date. In fact, I'm not going to have hearings on the 11th
8 and I'm not going to have them all on the same day as I
9 thought. Now that I've seen -- had a chance to preliminarily
10 look at the motions, I don't think it's a good idea to have
11 hearing after hearing on those motions.

12 So after the motions are ripe on February 4th,
13 assuming that works out and everything gets filed, then I'll
14 have Ms. Belmont reach out and schedule hearings on those
15 motions. I know everyone needs their discovery, and if you're
16 going to get discovery, I want to settle that sooner rather
17 than later. So I'll just ask you when we're setting up the
18 dates to keep in mind that we want to do that fairly quickly.

19 So the parties' proposed dates for additional
20 discovery motions, as set out in the Status Report, are
21 adopted, but I do want to caution the parties that when you get
22 trial dates before Judge Gorton, they're going to be firm
23 dates. I don't know what the dates are, but he has previously
24 stated that the trials will need to be this year.

25 So I'm happy to adopt the dates, but once you get your

1 trial dates, you may want to revisit those dates and give
2 yourself enough time to get the discovery you're going to be
3 requesting and to digest it. I would really urge defense
4 counsel to do as you've done so well up until now and file
5 discovery motions on a rolling basis and not wait until the
6 last date, because the trial date is probably not going to get
7 moved. So I think we want to get the motions decided as
8 quickly as we can.

9 So the dates for pretrial motions under Rule 12(b) are
10 fine as well and I'll adopt them, although, again, you may want
11 to revisit those dates in light of the trial date when you get
12 it. Of course, the dispositive motions dates that are set out
13 there will be subject to Judge Gorton's approval, which I
14 presume he will give, but that's really up to him. If he does
15 not adopt them, I think you'll hear about it at the status
16 conference next month.

17 I will say that if the motions are ripe by the end of
18 June, then if that ends up being the date, you probably will
19 not get a further date. So if that is the date for filing
20 them, I think it's unlikely you'll get extensions on that date.

21 The Colburns' motion that had been previously filed
22 will certainly be deemed to have been filed on April 1st when
23 the other motions are due. That's no problem. Obviously, if
24 the Colburns want to file a revised motion in light of anything
25 that you've learned or supplemental, that's perfectly fine too.

1 As you wish.

2 MR. SCHUMACHER: Thank you, your Honor.

3 THE COURT: I'm going to adopt the parties' agreement
4 regarding the timing of expert disclosures. I'll revisit the
5 issue that has been raised about the Government giving the
6 defendants early notice of their experts at the next status
7 conference, also the scope of the disclosures, and I'm going to
8 order the parties to further confer about this prior to the
9 next conference and see if you can reach agreement on this
10 issue. I would just say if it were up to me to decide such a
11 dispute, I do think it's better for the parties to alert the
12 other side if they plan on calling an expert just so people can
13 be getting ready for it and are not kind of shocked to get a
14 notice, you know, basically on the eve of trial. Even if it's
15 60 days or so, that's not a lot of time to get ready. So I
16 would just urge the parties to be collegial about their
17 witnesses.

18 I know the parties agreed on a June status date. I'd
19 like to have a further interim status conference prior to that
20 date in early May, and I was considering May 5th at 11 a.m. If
21 this poses a problem for a number of people, then I'll let the
22 parties agree on another date in early May. So if that date is
23 just really impossible for you and you don't want someone to
24 stand in for you, you can let Ms. Belmont know by the close of
25 business today, and then I might just have the parties further

1 confer on a date. I'm going to exclude the time between now
2 and the next date under the Speedy Trial Act.

3 So what else can I do for you?

4 Wow, no one has any complaint?

5 MR. WEINBERG: I guess I would say one thing. I think
6 it's probably more a subject for a later status conference or
7 even more a status conference with Judge Gorton, but we have
8 received an enormous amount of discovery. It's almost
9 unquantifiable between the audio tapes, the document discovery,
10 the e-mail discovery, the discovery that comes in from third
11 parties. We received on January 9 another rather significant
12 production of both new and old discovery, and we will be asking
13 the Court to consider requiring the Government to file a real
14 exhibit list well before any trial is scheduled by Judge
15 Gorton. It's simply impossible for us to put our hands around,
16 you know, literally millions of e-mails, millions of documents,
17 thousands of audios, and prepare a meaningful targeted defense
18 without the Government being required at a time that's more in
19 advance than usual in a narrower case with less discovery. We
20 simply need to know what the Government is choosing from this,
21 you know, I hate to say millions of pages of discovery, so that
22 we can respond and target our defenses, and have a manageable
23 trial and a manageable multi-defendant trial.

24 So we will be asking the Court at the May conference
25 to consider asking the Government, whether it's 90 days or 120

1 days before trial, to be required to give us their exhibit
2 list. Obviously, it's not fixed in stone if they change
3 strategies. They could supplement the list. But at least we
4 can begin to zero in on the documents, e-mails and audios that
5 we need to master to be able to crystalize a defense to give
6 them responsive discovery that is not their discovery, but our
7 discovery, and will they prepare for a streamline trial that's
8 not, you know, completely chaotic.

9 THE COURT: Okay. Mr. Rosen, do you want to respond
10 to that?

11 MR. ROSEN: I mean, Judge, we will of course provide
12 an exhibit list, you know, prior to trial. We obviously change
13 the exhibits significantly as you approach trial, figure out
14 who is pleading guilty, who is not pleading guilty, who is
15 going forward and we streamline our case. I think 90 or 120
16 days would be impossible to do, but we're open to a resolution,
17 provided that the defendants of course provide reciprocity to
18 that in their own exhibit list and we get some -- we get what
19 we believe is deserved to us as well, including the Rule 16(b)
20 reciprocal discovery.

21 So we're hoping to a resolution. I think we can work
22 together with the parties to come up with a date for an exhibit
23 list, but I do want it to be reciprocal.

24 THE COURT: Okay. So I'll just table that for now and
25 it seems like there's some room for the parties to negotiate

1 with each other over that issue.

2 Let me also just encourage the defendants who do
3 intend to go to trial to talk to each other about potential
4 trial dates, or at least target time zones, and if you wanted
5 to file something with Judge Gorton prior to the hearing, that
6 would be really helpful, because he's going to have a hard time
7 just looking at his calendar at the conference and figuring out
8 when he is free and can match up with your dates. So any
9 advance notice you could give him of your availability I think
10 would be very, very helpful, especially with so many counsel.

11 In that regard, if the Government, prior to their
12 filing, even could let the defendants know kind of what your
13 thoughts are and what your target dates would be, that would be
14 great.

15 I don't think there's been much mention so far about
16 the volume of discovery in this case, so that may be something
17 you want to kind of catalogue and provide to him so that he has
18 some idea about the material that the parties are trying to
19 digest prior to trial, because I don't think that's anywhere in
20 the record really. So I would just urge you prior to your
21 conference with him to kind of be proactive about what you're
22 going to ask for at the conference because I think you're more
23 likely to get a date you want.

24 Yes?

25 MS. MINER: Your Honor, I meant when the Government

1 files its proposed groupings, it would be very helpful to the
2 defense if they could let us know what they -- if their
3 groupings are adopted, how long each group trial would be. Is
4 it two weeks, is it three weeks, is it four weeks?

5 THE COURT: Sure.

6 MS. MINER: And we could do the same for the defense
7 case. I think that's only fair.

8 THE COURT: Sure. I think what happened in the MS-13
9 case was the Government grouped people in Group 1, 2, 3 and 4,
10 and then the trial dates were just staggered to give everyone
11 time to recover from one trial and get ready for the next
12 trial. Then as it turns out, that ended up being kind of
13 fluid. I think one trial maybe only had one defendant by the
14 end, but anyway. I think that may be one model here. But I do
15 think if the parties can talk to each other candidly before
16 your standing up before the District Court, that would really
17 streamline things.

18 Do you have any -- does the Government have any idea
19 about the -- I'm not asking you to talk about it now --

20 MR. ROSEN: Right.

21 THE COURT: -- but do you have some idea about it?

22 MR. ROSEN: Sure. We've been talking internally about
23 that, Judge, yeah.

24 THE COURT: Okay. So maybe after this conference you
25 want to -- I mean, you have all the defense counsel here. You

1 want to give them some idea of what you're thinking?

2 No. You're saying no. Okay.

3 MR. ROSEN: Probably not.

4 THE COURT: Okay. Never mind. That was my idea. So
5 here we go.

6 MR. ROSEN: We'll confer. We'll try to confer as best
7 we can.

8 MR. BERKOWITZ: It was an excellent idea, your Honor.

9 THE COURT: Thank you.

10 Okay. So anything else to address today?

11 So if be -- I feel like May is a long time away. If
12 you feel like we should have another status conference in the
13 meantime to address, you know, groups of issues, I'm happy to
14 have one, and you could just notify Ms. Belmont that you'd like
15 to have a status conference sooner than May and I'm happy to do
16 that.

17 Alright. If there's nothing else, then I'll just try
18 to put all that I've said today on the docket. Then if you
19 have any questions, just contact Ms. Belmont and we'll try to
20 clear up any questions.

21 Thank you.

22

23 (The hearing was concluded.)

24

25

C E R T I F I C A T I O N

I, Karen M. Aveyard, Approved Federal Court Transcriber, do hereby certify that the foregoing transcript, consisting of 20 pages, is a correct transcript prepared to the best of my skill, knowledge and ability from the official digital sound recording of the proceedings in the above-entitled matter.

/s/ Karen M. Aveyard

Karen M. Aveyard

February 9, 2020

Date